

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESUS MANUEL GALLEGOS,

Petitioner,

v.

No. 17-cv-0909 WJ/SMV
11-cr-2994 WJ/SMV

UNITED STATES OF AMERICA,

Respondent.

ORDER QUASHING ORDER TO SHOW CAUSE AND
DIRECTING USE OF CERTIFICATES OF SERVICE

THIS MATTER is before the Court on the United States' Response Showing Cause [Doc. 305], filed on December 4, 2017. The Court ordered the United States to show cause why its Response Opposing Vacatur [Doc. 296] should not be deemed as consent to grant Mr. Gallegos's Petition under § 2255 because there was no indication that the Response had been served on Mr. Gallegos. [Doc. 304] (citing D.N.M.LR-Civ. 7.1(b)). The Response had read, "The United States will attempt to serve a copy of this response on Defendant by mail." [Doc. 296] at 7. However, a promise to serve—or *attempt* to serve—in the future is not adequate. *See* Fed. R. Civ. P. 5(d) (requiring certificates of service).

The United States timely responded to the Order to Show Cause, and counsel attested that on November 9, 2017, he had caused the Response Opposing Vacatur to be mailed to Mr. Gallegos at the addressed listed on his Petition. [Doc. 305] at 2. The address on the Petition does not clearly list Mr. Gallegos's inmate number. [Doc. 283] at 11. If the November 9, 2017 mailing

did *not* include Mr. Gallegos's inmate number, counsel must re-serve the Response on Mr. Gallegos **no later than December 8, 2017**, and file a new certificate of service.

In the future, the United States should include Mr. Gallegos's inmate number with his address. The most current address and inmate number on the docket for Petitioner is:

Jesus Manuel Gallegos
64246-051
USP Hazelton
P.O. Box 2000
Bruceton Mills WV 26525

Additionally, for all future filings, the United States is directed to utilize the form of certificate of service provided in the Court's Administrative Procedures Manual at pages 12–13.¹ Certificates of service must indicate the manner and date that service was effectuated, including the complete address utilized, if applicable.

IT IS THEREFORE ORDERED that Order to Show Cause [Doc. 304] is **QUASHED**.

IT IS FURTHER ORDERED that if the November 9, 2017 mailing of the United States' Response Opposing Vacatur [Doc. 296] did not include Mr. Gallegos's inmate number, the United States must re-serve its Response **no later than December 8, 2017**, and file a certificate of service.

IT IS FURTHER ORDERED that the United States comply with all applicable rules regarding certificates of service.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge

¹ The Administrative Procedures Manual can be found at <http://www.nmd.uscourts.gov/filing-information>.